IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3727 of 2006
Date of Decision: 4.12.2006

Hazara Singh and another ...Appellants

Versus

Kuldip Kaur ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Rajinder Goyal, Addvocate, for the appellants.

Shri Amit Jain, Advocate, for the Caveator-respondent.

HEMANT GUPTA, J.

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the decree granted by the learned trial Court was set aside and the suit dismissed.

The dispute is regarding the estate of one Joginder Singh, who died issueless on 27.5.2000. The plaintiffs filed the present suit for declaration claiming his estate on the basis of natural succession, whereas the defendant, wife of Didar Singh, son of pre-deceased brother of Joginder Singh propounded a registered Will dated 3.3.1994. Though the learned trial Court discarded the aforesaid Will, but the learned first Appellate Court by giving cogent and detailed reasons found that the Will stands duly proved and consequently set aside the judgment and decree passed by the

learned trial Court and dismissed the suit.

To prove the Will, the defendant examined both the attesting witnesses i.e. DW2 Jaspal Singh and DW3 Sadhu Singh. The defendant also examined DW5 Pritpal Singh, father of the scribe as well as Registration Clerk from the office of Sub Registrar, namely, Rajwant Singh as DW6. All the witnesses have deposed in favour of the execution of the Will by deceased Joginder Singh.

Learned counsel for the appellant has vehemently argued that the statements of the attesting witnesses are discrepant in material aspects and, therefore, the Will Exhibit D.1 is not proved to be executed. However, the learned first Appellate Court has given detailed reasons and met each of the reasonings given by the learned trial Court, to hold that the Will is not surrounded by the suspicious circumstances. It was argued that one of the witnesses has stated that the Will was attested by a female Sub Registrar, while another witness has stated that the Will was attested by the male Sub Registrar. The Court has found that such evidence has to be taken into the context of the registration of the Will as the thumb impressions are obtained by the supporting staff of the Sub Registrar. Still further, it has been found that the attesting witnesses are the illiterate rustic villagers, who have been examined after more than 10 years of the execution of the Will and therefore, some discrepancies are bound to appear with the passage of time. It has been also found that the deceased Joginder Singh has died more than 6 years after the execution and registration of the Will in favour of the defendant.

The findings recorded by the learned first Appellate Court are based upon proper appreciation of evidence. It could not be

pointed out that any evidence has been misread or not taken into consideration. Such findings are sought to be disputed in second appeal by re-appreciation of evidence.

I do not find that the findings recorded by the learned first Appellate Court suffer from any patent illegality or irregularity, which may raise any substantial question of law in the present appeal.

Hence, the present appeal is dismissed in limine.

04-12-2006 (HEMANT GUPTA)
ds JUDGE